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47

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,549	07/17/2003	John W. Von Holdt JR.	10778.00016	1338

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EXAMINER

ELOSHWAY, NIKI MARINA

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

JA

Office Action Summary	Application No.	Applicant(s)	
	10/621,549	VON HOLDT, JOHN W.	
	Examiner	Art Unit	
	Niki M. Eloshway	3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>9/11/03</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lid with a tear strip which removes portions of both the first flange and the second flange must be shown or the feature(s) canceled from the claim(s) (claim 2). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Art Unit: 3727

3. Claims 1-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are considered vague and indefinite for the following reasons:

- (a) The wording of the phrase "said tear strip including removable portions of the first flange from engaging the bucket rib , and other portion of the first flange remaining for engaging the bucket rib" on lines 11-13 of claim 1, is unclear. Also, how can the tear strip include the removable portions and the "other portions" (non-removable) of the first flange?
- (b) Claim 2 recites the limitation "the skirt extension" in line 4. There is insufficient antecedent basis for this limitation in the claim.
- (c) Claim 3 recites the limitation "said skirt extension" in line 3. There is insufficient antecedent basis for this limitation in the claim.
- (d) claim 8/5 is considered vague and indefinite because it is unclear how reinforcing fillets can connect the hoops if there is only a first hoop.
- (e) Claim 9 is considered vague and indefinite because both independent claim 1 and claim 9 set forth that the top rib has a tongue. Does the top rib have two upwardly projecting tongues or is claim 9 claiming the same tongue set forth in claim 1? Claim 9 is also considered vague and indefinite because both independent claim 1 and claim 9 set forth that the lid has a groove. Does the lid have two grooves or is claim 9 claiming the same groove set forth in claim 1?
- (f) Claim 10 recites the limitation "the second rib" in line 2. There is insufficient antecedent basis for this limitation in the claim.
- (g) Claim 12 recites the limitation "the second flange" in line 1. There is insufficient antecedent basis for this limitation in the claim.
- (h) The dependent claims not specifically mentioned are rejected as being dependent upon a rejected base claim since they inherently contain the same deficiencies therein.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 and 2 of U.S. Patent No. 6,619,498. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the tongue on the container and the groove on the lid, as taught by 6,619,498 since it has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 4-7, 9 and 11 are rejected under 35 U.S.C. 102(b) as being anticipated by Von Holdt (U.S. 4,735,337). Von Holdt teaches a bucket 10 having a top rib at 14 with the upper surface of the top rib forming an upwardly projecting tongue. The lid 12 has a first inwardly extending flange at 20 and a groove above element 20 which receives element 14. The tear strip is element 16.

8. Claims 1, 2, 4, 5, 7/5, 9-12, 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Cargile et al. (U.S. 5,460,287). Cargile et al. teaches a bucket 10 having a first top rib 26 with a tongue 22 extending upwardly therefrom. The lid 12 has a flange which is the horizontal surface of 34 which engages the lower surface of element 26. The tear strip is element 30. the second rib is element 28.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1, 3-7, 9 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Widen et al. (U.S. 4,444,332) in view of Cargile et al. (U.S. 5,460,287). Widen et al. discloses a bucket 2 having a side wall 8 with a first top rib at 10 and an upwardly projecting tongue between elements 18. The lid 4 has a peripheral section at 12, a first flange 40 and a downwardly projecting groove between

Art Unit: 3727

elements 34 and 36. Widen et al. does not teach the tear strip. Cargile et al. teaches that it is known to provide a lid with a tear strip (see element 30). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the container assembly of Widen et al. with the tear strip of Cargile et al., in order to provide the lid with means to indicate tampering.

11. Claims 1- are rejected under 35 U.S.C. 103(a) as being unpatentable over Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Von Holdt (U.S. 4,735,337) in view of Blanchette (U.S. 4,930,656). Von Holdt discloses the claimed invention except for the reinforcing fillets.

Blanchette teaches that it is known to provide reinforcing fillets between two hoops (see element 50 between hoops 46 and 48). It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the assembly of Von Holdt with the reinforcing fillets of Blanchette, in order to strengthen the lid for stacking.

Allowable Subject Matter

12. Claim 13 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art is cited for the bucket and lid engagement.

14. THIS ACTION IS NON-FINAL.

15. In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses to Office Actions directly to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who

Art Unit: 3727

authorize charges to a USPTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX will be promptly forwarded to the examiner.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niki M. Eloshway whose telephone number is (571) 272-4538. The examiner is in the office on Thursdays and Fridays. Any inquiry of a general nature or relating to the status of this application should be directed to the 3700 Receptionist at (703) 308-1148.



Niki M. Eloshway/nme
Patent Examiner
January 7, 2005